IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9035 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NAWABKHAN @ GOLO AYUBKHAN PATHAN

Versus

STATE OF GUJARAT

Appearance:

MR MM TIRMIZI for Petitioner

MR SAMIR DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 06/10/2000

ORAL JUDGEMENT

1. The order of detention dated June 7, 2000 passed by the Commissioner of Police, Ahmedabad City in exercise of powers conferred on him by sub-section (2) of section 3 of the Gujarat Prevention of Anti-Social Activities,

Act, 1985 ('the Act' for short) against the detenu is subject matter of challenge in the present petition which is filed under Article 226 of the Constitution of India.

2. The order of detention was executed on June 7, 2000. The grounds of detention were communicated to the detenu immediately as required by section 9 of the Act. The detaining authority had thereafter submitted report to the State Government as contemplated by section 3 (3) of the Act. On receipt of the report from the detaining authority, the State Government had approved the order of detention within 12 days from the date of making of it. The State Government had thereafter referred the case of the detenu to the Advisory Board together with grounds of detention and other relevant materials. The Advisory Board has considered the materials placed before it and reported in its opinion that there was sufficient cause for detention of the detenu. On receipt of the report from the Advisory Board, order of detention was confirmed by the State Government and the State Government has continued the detention of the detenu.

3. From the grounds of detention it is apparent that the detaining authority has taken into consideration three cases registered against the detenu under Chapter XVI of the Indian Penal Code with Shaher Kotda Police Station, Ahmedabad in order to form subjective satisfaction that the petitioner is a dangerous person within the meaning of section 2 (c) of the Act. The grounds of detention further indicate that the detaining authority has taken into consideration statements of two witnesses in order to reach the subjective satisfaction that the activities of the detenu as a dangerous person disturbed maintenance of public order and, therefore, it was necessary to detain him with a view to preventing him from acting in any manner prejudicial to maintenance of public order.

4. Though several grounds have been urged by the learned counsel for the petitioner for challenging the detention order, it is not necessary to refer to all of them, except one which in my opinion merits acceptance.

5. The learned counsel for the petitioner submitted that the detaining authority has wrongly exercised the power u/S. 9(2) of the Act and as such wrong exercise of power has resulted into infringement of the right of the detenu to make effective representation guaranteed under Article 22 (5) of the Constitution of India, the order of detention should be set aside. It was pointed out by the learned counsel for the petitioner that one statement of

a witness was recorded on June 4, 2000 and another on June 5, 2000 and after verifying the same on Juen 6, 2000 the detaining authority had passed detention order on next date i.e. 7/6/2000 after exercising discretion mechanically u/S. 9(2) of the Act and, therefore, the petition should be allowed. In support of this submission learned counsel has placed reliance on the decision of Division Bench of this Court rendered in Kalidas C. Kahar v/s. State of Gujarat reported in 1993 (2) G.L.R. 1659.

6. It may be stated that the detaining authority has not filed any reply controverting the averments made in the petition. Section 9(2) of the Act empowers the detaining authority to withhold disclosure of facts if the detaining authority is of the opinion that such disclosure is against public interest. At the time of exercising the power u/S. 9(2) of the Act a balance is required to be struck between the public interest on one hand and the right of the detenu to make a representation under Article 22 (5) of the Constitution on the other. The right of the detenu to make representation to the effect that the persons whose statements recorded are fictitious persons or that the statements are bogus cannot be ignored while exercising power u/S. 9(2) of the Act. It is the duty of the detaining authority to strike a balance as mentioned above because exercise of such powers also affect the right of the detenu to make representation to the competent authority. The power to be exercised u/S. 9 (2) of the Act is not an idle formality as it affects the valuable right of the detenu to make representation. Looking to the facts of the case, it is evident that statement of one witness was recorded by the Police Inspector on 4/6/2000; whereas statement of another witness was recorded on 5/6/2000, which were verified by the detaining authority on 6/6/2000, after which the impugned order of detention was passed on 7/6/2000. It is curious that the entire bunch of material was supplied by the sponsoring authority at the time of making proposal and that has been promptly accepted by the detaining authority without considering the right of the detenu to make effective representation. The facts of the case would disclose that there was no sufficient time for the detaining authority to examine properly the matter before exercising power u/S. 9(2) of the Act, as proposal made was promptly accepted by the detaining authority. Similar is the view taken by the Division Bench of this Court in Kalidas C. Kahar's case (supra). Under the circumstances I am of the view that because of wrong exercise of power under sec. 9(2) of the Act by the detaining authority, right of the detenu

to make an effective representation under Article 22 (5) of the Constitution of India is infringed and his continued detention is vitiated.

7. For the foregoing reasons, the petition succeeds. The order of detention dated June 7, 2000 passed by the Commissioner of Police, Ahmedabad city, which is produced at Annexure-A to the petition is quashed and set aside. The respondents are directed to release the detenu immediately unless his presence is needed with reference to any other case. Rule is made absolute accordingly with no order as to costs. DSP.

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PVR.